



## **The Confederated Tribes of the Grand Ronde Community of Oregon**

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July 26, 2016

Mr. Dennis J. McLerran  
Regional Administrator  
United States Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Re: Tribal Consultation on the Proposed Plan

Dear Mr. McLerran:

The Confederated Tribes of the Grand Ronde Community of Oregon ("Grand Ronde" or "Tribe") appreciated the opportunity to meet on July 19, 2016. As discussed at the meeting, the Willamette River is of great importance to the Tribe. The lands on which Willamette Falls and the Portland Basin is located are included in the lands ceded under the treaty of January 22, 1855, by the confederated bands living within the Willamette Valley. This treaty was ratified by Congress in March of 1855, and was signed by representatives of the Kalapuyan bands, the Molalla, the Clackamas, and other bands living in the Willamette Valley. These tribes and bands are included in the modern Confederated Tribes of the Grand Ronde Community of Oregon. Grand Ronde is the only tribe whose treaty covers this area and these treaties remain in effect to this day.

Therefore, we respectfully request that the Environmental Protection Agency ("EPA") work with our staff to answer the following questions regarding the remediation of the Portland Harbor Superfund Site. Your cooperation will allow us to provide our comments on the Proposed Plan before the September 6, 2016, deadline.

### **EVALUATION OF ALTERNATIVES**

- 1) The Proposed Plan estimates that Alternative I [the preferred alternative, developed after the Feasibility Study ("FS")] will achieve cleanup levels 23 years following the completion of construction. What basis and scientific support does EPA have for this estimate?
- 2) We appreciate EPA's attempt to address our previously expressed concerns about the lack of rigorous, quantitative evaluation of the alternatives. The revised FS Section 4 (Detailed Analysis of Alternatives) is an improvement over previous versions. However, the analyses still lack rigor (e.g., the interim target and residual risk concepts) and do not provide confidence that

Alternative I is the best alternative. Please explain how the evaluation of alternatives is sufficient.

EPA's evaluation of the "long-term effectiveness and permanence" (defined as "residual risk and the ability of an alternative to maintain reliable protection of human health and the environment over time once PRGs [preliminary remediation goals, or cleanup levels] are achieved") of each alternative is confusing at best. It seems as though EPA is making a judgment about the long-term effectiveness and permanence of each alternative based on the relationship between residual risk (risk once cleanup levels are achieved) and post-construction risk. How does this relationship indicate long-term effectiveness and permanence? How should we interpret the results of this analysis? For instance, what does EPA think is an acceptable relationship between residual risk and post-construction risk?

Shouldn't long-term effectiveness and permanence be evaluated, at least in part, on the reliance on sediment caps, which could fail over time; and on the need for fish consumption advisories ("FCAs") and other institutional controls in the long-term, which have been shown at other sites to not be entirely effective at eliminating risk?

3) Alternative I does not appear to meet the majority of interim targets. Based on EPA's interim risk concept, it seems that Alternative G would be the only acceptable choice because it meets all measurable interim targets. How does EPA justify selecting Alternative I when it does not meet most interim targets and, therefore, according to EPA's own analysis, will not meet cleanup levels within the 30-year "reasonable time frame"?

4) The Tribe is concerned about the revised FS section on the Detailed Analysis of Alternatives. It is an improvement from the previous versions but the analyses still lack rigor and do not provide confidence that Alternative I is the best alternative. Please explain how the evaluation of alternatives is sufficient.

5) It is not readily apparent from the Proposed Plan or the FS how EPA developed Alternative I as an improved version of Alternative E. We understand that Alternative I is intended to make risk reduction more consistent across the site compared to Alternative E, but what process did EPA use to improve upon Alternative E, and how can we be confident that Alternative I is the best (e.g., most efficient) version of Alternative E?

6) How did EPA determine what constitutes the "reasonable time frame" designation of 30 years? Is there precedent for this time frame? It is our understanding that 10 to 20 years is more commonly used.

7) We feel that the Preliminary Remediation Goals ("PRGs") are generally based on sound science and we strongly urge EPA not to increase the values in the Record of Decision ("ROD"). Does EPA expect to make any changes to the PRGs before finalizing them as cleanup levels? If EPA did make changes, on what basis would they make these changes?

8) EPA assumes that monitored natural recovery (“MNR”) will be applied to all areas within the site boundaries that are not actively remediated. Did EPA evaluate whether areas slated for MNR are conducive to this technique, such as whether they are depositional? For instance, there are significant portions of River Miles 5 through 7 that are slated for MNR under Alternative I and this area appears to be more transitional than depositional.

9) We are concerned about the amount of riverbank slated to be actively remediated. Only 65% of the total contaminated riverbanks in the site are included under Alternative I, without any further explanation of how the remaining banks will be addressed or whether they pose a high potential for recontamination. Will the Department of Environmental Quality be evaluating and remediating the remaining riverbanks under their upland source control work or have they already done so? Why does EPA feel that remediating 65% of contaminated riverbanks is sufficiently protective?

## **FISH CONSUMPTION**

10) EPA assumes that under Alternative I, the FCA immediately following construction will be approximately 50 fish meals per 10 years. This fish consumption rate is significantly lower than the tribal fish consumption rate of 1,380 resident fish meals per 10 years<sup>1</sup> used in the Baseline Human Health Risk Assessment. How can EPA assert that Alternative I is sufficient with such low rates of safe fish consumption? What does EPA believe that safe fish consumption rates will be in 23 years? Will the Tribe ever be able to eat fish safely without restrictions?

a. Even Alternative G only allows for 100 fish meals per 10 years immediately following construction. Is there anything more EPA can do to develop a remedy that allows for more fish consumption without such a heavy reliance on natural recovery (which is highly uncertain)? EPA does not appear to calculate acceptable fish meals for Alternative H [bank-to-bank dredging]. Would Alternative H allow for unrestricted fish consumption immediately following construction?

b. We support EPA stating in the ROD that an FCA Implementation and Assurance Plan should be developed during remedial design.

11) Assuming that cleanup levels are eventually met across the site, will FCAs still be needed after the 30-year period? If so, what is the plan for issuing those?

12) Will surveys (in-person, online, by phone, or otherwise) be conducted to determine the effectiveness of the FCAs? If evidence indicates that the FCAs are not effective (i.e., if people continue to fish and consume their catch above safe meal limits), what is EPA’s contingency plan?

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<sup>1</sup> The Baseline Human Health Risk Assessment assumes 23 fish meals per month, with half of meals being comprised of resident fish.

## **MONITORING**

- 13) Will EPA evaluate whether the cleanup actually achieves the interim targets post-construction? What actions will EPA take if interim targets are not met?
- 14) Will EPA specify time-dependent decision points in the ROD for the purpose of determining progress toward achieving remediation goals? For example, if the remedial action is not achieving a specific standard or interim goal by a specific 5-year review, then additional cleanup actions will be considered.
- 15) The importance of monitoring cannot be overstated. Insufficient detail regarding monitoring activities is provided in the Proposed Plan and FS. The success of the remedy is largely dependent on diligent monitoring activities. Will details such as the frequency of monitoring, the entities conducting and overseeing the monitoring, and the reporting requirements be described in the ROD? Of particular concern, we expect monitoring to (1) identify and correct potential technology failures before they cause widespread recontamination, and (2) to determine if the site is making progress toward achieving remediation goals within a pre-determined period of time.

## **TIMELINE**

- 16) What is the process and timeline for resolving the Responsible Parties' dispute of the FS?
- 17) Does EPA anticipate that remedial design will commence immediately after the ROD is signed (i.e., that the three to five years for remedial design that is estimated in the FS will start in early 2017)?

## **PROCEDURAL**

- 18) How does EPA plan to balance comments received from the community, the tribes, and the Responsible Parties?
- 19) We continue to be concerned that the Responsible Parties will be allowed too much flexibility during remedial design and remedial action (for example, being allowed to cap in an area that the ROD designates for dredging, provided they could demonstrate that a cap would effectively contain the material). No discussion of potential flexibility was delineated in the Proposed Plan, despite previous comments from the tribes and the Responsible Parties on this topic. Will the ROD address the topic of flexibility? It is our understanding and preference that if opportunities for flexibility are not detailed in writing, then flexibilities will not be permitted.

## **MISCELLANEOUS**

- 20) How have the costs of the alternatives been so greatly reduced in comparison to the previous version of the FS? What is the EPA's response to the Responsible Parties' assertion that costs are grossly underestimated?

21) We are interested in the idea of an on-site transload facility for the dredged material, which potentially could result in fewer adverse impacts to the Columbia River compared to EPA's default assumption of an off-site transload facility on the Columbia River. Does EPA have more specific locations in mind for the on-site and off-site facilities? What does EPA see as the relative merits of each?

22) Please describe the types of "green" best management practices that EPA will consider when developing their Green Remediation Plan. We support using green practices wherever possible. We further believe annual costs of implementing the remedy can be driven down further through energy efficient management approaches during construction.

We thank you for your time and consideration. If you have any questions, please feel free to contact Brandy Humphreys, Ceded Lands Coordinator, at 503-879-2423 or Holly Partridge, Staff Attorney, at 503-879-2335.

Respectfully,

A handwritten signature in black ink, appearing to read "Reynold L. Leno". The signature is fluid and cursive, with the first name "Reynold" being more prominent than the last name "Leno".

Reynold L. Leno  
Tribal Council Chair

cc: Tribal Council  
Holly Partridge, Staff Attorney  
Brandy Humphreys, Ceded Lands Coordinator  
Michael Karnosh, Ceded Lands Program Manager